

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-214860

DATE: May 1, 1984

MATTER OF: Frasier-Deason, Inc.

DIGEST:

Telegraphic bid modification received more than 2 hours after bid opening is properly rejected as late despite submission of modification by protester to Western Union more than 5 hours before bid opening, absent evidence that the late receipt was due to government mishandling.

Frasier-Deason, Inc. protests the rejection of its telegraphic bid modification as late by the Department of the Interior, Fish and Wildlife Service, under invitation for bids No. FWS-5-84-012 for completion of the Southeastern Fish & Cultural Laboratory, Marion, Alabama.

Bid opening was scheduled for March 27, 1984 at 2 p.m. Frasier-Deason states that its basic bid was timely received by the procuring activity and that it called in a bid modification to the Western Union office in St. Louis, Missouri at 8:30 a.m. on March 27 and was assured that the modification would be delivered within 2 hours, or by noon without fail. Shortly before bid opening, at 1:30 p.m., Frasier-Deason telephoned the contracting activity and discovered that its telegraphic bid modification had not been received. Frasier-Deason states that despite its efforts to obtain delivery at that time, Western Union did not call the contracting activity until 3:20 p.m. and did not complete delivery until 4:30 p.m., which was after the 2 p.m. bid opening.

Frasier-Deason reports that Western Union did not even dispatch the telegram from its St. Louis office until 10:03 a.m., and argues that both this delay and the subsequent delay in delivering the telegram were beyond its control. Frasier-Deason states that in some procurements of construction by the General Services Administration (GSA), the solicitation has included a "Delay In Bid Opening" clause which permits the postponement of bid opening when the

028728

contracting officer has reason to believe that the bids of a substantial segment of the bidders (Frasier-Deason was one of two bidders here) have been delayed for causes beyond their control. Frasier-Deason does not contend that the present solicitation contains such a provision but apparently believes that through some application of this policy its bid should be considered for award.

It is unquestioned that the modification did not arrive until 2-1/2 hours after bid opening time. Under these circumstances, the solicitation clause governing late bid modifications provides that telegraphic bid modifications received late may only be considered if it is determined that the late receipt was due solely to mishandling by the government after receipt at the government installation. Scherr Construction Company, Inc., B-211455, June 28, 1983, 83-2 CPD 40. Here, there is no allegation that there was any mishandling of the late telegraphic bid modification by the government installation, either at the time of receipt or after receipt. Consequently, Frasier-Deason's late bid modification does not fall within the sole exception permitting consideration of late telegraphic bids and bid modifications.

We are unable to comment on the solicitation clause which the protester states has been used by GSA since the protester has quoted only a portion of the clause, and not provided us with its full text, and we are aware of no similar provision in the Federal Procurement Regulations. We have, however, had occasion to comment upon Defense Acquisition Regulation § 2-402.3(a)(i), which permits the postponement of a bid opening:

"when the contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control and without their fault or negligence (such as, but not limited to, flood, fire, accident, weather conditions or strikes);. . . ."

With regard to this clause, we have observed that:
(1) it applies only to bids delayed in the mails and not to those, as here, delivered by common carrier (MTS Systems Corporation, B-200590, December 15, 1980, 80-2 CPD 431);
(2) its use is discretionary with the contracting officer (B-173409, November 16, 1971); and that it is for use in responding to (3) unusual, unanticipated events which have

B-214860

a widespread effect and not circumstances peculiar to one particular bidder. See Unitron Engineering Co., Inc., 58 Comp. Gen. 748 (1979), 79-2 CPD 155; MTS Systems Corporation, supra. This of course, is not such a case. In any event, there is no indication that the solicitation here contained a "Delay In Bid Opening" clause.

With regard to Western Union's assurance that it would deliver the modification within 2 hours, we have held that a bidder must bear the responsibility for the late arrival of its bid notwithstanding the commercial carrier guaranteed it would be delivered before bid opening. Sigma Treatment Systems, B-207791, June 21, 1982, 82-1 CPD 613.

The protest is summarily denied.

for Harry R. Van Cleave
Comptroller General
of the United States